

AMENDED IN SENATE APRIL 18, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1106

Introduced by Senator Strickland

February 17, 2012

~~An act to add Chapter 20 (commencing with Section 26250) to Division 20 of the Health and Safety Code, relating to environmental health. An act to add Section 42253.1 to, and to repeal and add Sections 42256 and 42257 of, the Public Resources Code, relating to recycling.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1106, as amended, Strickland. ~~Reusable bags. Recycling: reusable bags.~~

Existing law, part of the California Integrated Waste Management Act of 1989, as administered by the Department of Resources Recycling and Recovery, requires an operator of a store, as defined, to establish an at-store recycling program that provides customers the opportunity to return clean plastic carryout bags to that store and to make reusable bags available to customers. Existing law prohibits a city, county, or other local public agency from taking specified regulatory actions with regard to plastic carryout bags. A violation of these requirements is subject to civil liability penalties imposed by a local agency or the state. These requirements and prohibitions are repealed on January 1, 2013.

This bill would delete the repeal date, thereby continuing those requirements and prohibitions indefinitely. The bill would require a person that manufactures a reusable bag to print or attach a warning label on the reusable bag containing specified information. The bill would also require a person who sells or distributes a reusable bag to conspicuously display that warning near the display where reusable

bags are sold or distributed or provide that warning in another written form.

The bill would require the department, by October 1, 2013, to conduct a study, in consultation with the State Department of Public Health, to evaluate the health risks of using reusable bags, to monitor the health effects in communities that principally use reusable bags, and to determine the validity of specified findings of previously published studies. The bill would require the department, upon completing the study, to conduct a one-year statewide education and awareness campaign.

~~Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for regulation by the State Department of Public Health of the packaging, labeling, and advertising of food, drugs, and cosmetics.~~

~~This bill would prohibit the manufacture, sale, and distribution of a reusable bag, as defined, without a specified warning label. This bill would subject a violator to an action for injunctive relief and for civil penalties, which may be brought by the Attorney General, local officials, or private persons acting in the public intent after a prescribed notice is given to the Attorney General and local officials and other conditions are met. By imposing additional duties on local officials. This bill would impose a state-mandated local program.~~

~~This bill would also state findings and declarations of the Legislature relative to food-borne illness and reusable grocery bags.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 42253.1 is added to the Public Resources
- 2 Code, to read:
- 3 42253.1. (a) A person that manufactures a reusable bag shall
- 4 print or attach the following warning label on the reusable bag in
- 5 10-point type:

1
2 *WARNING: Reusable bags must be cleaned and disinfected*
3 *between uses to prevent food cross contamination. Failure to do*
4 *so can cause serious illness resulting from food-borne pathogens.*
5

6 *(b) A person who sells or distributes a reusable bag shall either*
7 *conspicuously display the warning specified in subdivision (a)*
8 *near the display where reusable bags are sold or distributed or*
9 *provide the warning in another written form available to the*
10 *consumer.*

11 *SEC. 2. Section 42256 of the Public Resources Code is*
12 *repealed.*

13 ~~42256. This chapter shall become operative on July 1, 2007.~~

14 *SEC. 3. Section 42256 is added to the Public Resources Code,*
15 *to read:*

16 *42256. On or before October 1, 2013, the department, in*
17 *consultation with the State Department of Public Health, shall*
18 *conduct a study to evaluate if the use of reusable bags, without*
19 *frequent cleaning, increases an individual's risk of serious illness.*
20 *The department may authorize a university or a statewide health*
21 *organization, including, but not limited to, the California*
22 *Endowment, to conduct the study. The study shall monitor the*
23 *health effects in communities that principally use reusable bags*
24 *and shall determine the validity of the following findings of*
25 *previously published studies:*

26 *(a) Most consumers are unaware that the United States*
27 *Department of Agriculture and federal Food and Drug*
28 *Administration have adopted guidelines regarding food safety*
29 *when shopping.*

30 *(b) The federal Centers for Disease Control and Prevention*
31 *reports that in the United States, contaminated food causes*
32 *approximately 1,000 reported disease outbreaks and an estimated*
33 *48 million illnesses, 128,000 hospitalizations, and 3,000 deaths*
34 *annually.*

35 *(c) Most food-borne infections cause diarrheal illness, ranging*
36 *from mild to severe. Also, persons in susceptible populations and*
37 *some healthy persons can develop severe complications, such as*
38 *hemorrhagic colitis, bloodstream infection, meningitis, joint*
39 *infection, kidney failure, paralysis, miscarriage, and other*
40 *problems.*

1 (d) A potential significant risk of bacterial cross contamination
2 exists from using reusable bags to carry groceries.

3 (e) Foods, including safely cooked and ready-to-eat foods, can
4 become cross contaminated with pathogens transferred from raw
5 egg, meat, poultry, and seafood products, and their juices and
6 their containers.

7 (f) Given the right circumstances, harmful bacteria can quickly
8 multiply on food and food containers in large numbers.

9 (g) Cross contamination problems associated with reusable
10 bags for carrying groceries has been recognized by health
11 departments, including the Minnesota Department of Health in
12 2007 and Health Canada in 2010, and based on those problems,
13 those health departments have made recommendations regarding
14 the proper handling and cleaning of reusable grocery bags.

15 (h) Hand or machine washing reduced the numbers of bacteria
16 in reusable bags by 99.9 percent.

17 (i) Consumers almost never wash reusable bags and those who
18 choose to use reusable bags should be made aware of possible
19 food safety health risks.

20 (j) A sudden or significant increase in the use of reusable bags
21 without a major public education campaign on how to reduce the
22 risk of cross contamination could create the risk of significant
23 adverse public health impacts.

24 (k) It is important to require printed instructions on reusable
25 bags that direct that they be washed between uses and that raw
26 foods be separated from other food products.

27 SEC. 3. Section 42257 of the Public Resources Code is
28 repealed.

29 ~~42257. This chapter shall remain in effect only until January~~
30 ~~1, 2013, and as of that date is repealed, unless a later enacted~~
31 ~~statute, that is enacted before January 1, 2013, deletes or extends~~
32 ~~that date.~~

33 SEC. 4. Section 42257 is added to the Public Resources Code,
34 to read:

35 42257. Upon completion of the study specified in Section
36 42256, the Department of Resources Recycling and Recovery, in
37 consultation with the State Department of Public Health, shall
38 conduct a one-year statewide education and awareness campaign
39 to inform the public regarding the health risks associated with
40 unwashed reusable bags.

1 ~~SECTION 1. This act shall be known and may be cited as the~~
2 ~~Safety Labeling of Reusable Grocery Bag Act.~~

3 ~~SEC. 2. The Legislature finds and declares all of the following:~~

4 ~~(a) Most consumers are unaware of the United States~~
5 ~~Department of Agriculture and federal Food and Drug~~
6 ~~Administration guidelines regarding food safety when shopping.~~

7 ~~(b) The federal Centers for Disease Control and Prevention~~
8 ~~reports that in the United States, contaminated food causes~~
9 ~~approximately 1,000 reported disease outbreaks and an estimated~~
10 ~~48 million illnesses, 128,000 hospitalizations, and 3,000 deaths~~
11 ~~annually.~~

12 ~~(c) Most food-borne infections cause diarrheal illness, ranging~~
13 ~~from mild to severe. Also, persons in susceptible populations and~~
14 ~~some healthy persons can develop severe complications, such as~~
15 ~~hemorrhagic colitis, bloodstream infection, meningitis, joint~~
16 ~~infection, kidney failure, paralysis, miscarriage, and other~~
17 ~~problems.~~

18 ~~(d) A potential significant risk of bacterial cross-contamination~~
19 ~~exists from using reusable bags to carry groceries.~~

20 ~~(e) Foods, including safely cooked and ready-to-eat foods, can~~
21 ~~become cross-contaminated with pathogens transferred from raw~~
22 ~~egg, meat, poultry, and seafood products, and their juices and their~~
23 ~~containers.~~

24 ~~(f) Given the right circumstances, harmful bacteria can quickly~~
25 ~~multiply on food and food containers in large numbers.~~

26 ~~(g) Cross-contamination problems associated with reusable bags~~
27 ~~for carrying groceries has been recognized by health departments~~
28 ~~(Minnesota Department of Health, 2007; Health Canada, 2010)~~
29 ~~that have made recommendations about proper handling and~~
30 ~~cleaning of reusable grocery bags.~~

31 ~~(h) Hand or machine washing reduced the numbers of bacteria~~
32 ~~in reusable bags by 99.9 percent.~~

33 ~~(i) Consumers almost never wash reusable bags and those who~~
34 ~~chose to use reusable bags should be made aware of possible food~~
35 ~~safety health risks.~~

36 ~~(j) A sudden or significant increase in the use of reusable bags~~
37 ~~without a major public education campaign on how to reduce the~~
38 ~~risk of cross-contamination would create the risk of significant~~
39 ~~adverse public health impacts.~~

1 ~~(k) It is important to require printed instructions on reusable~~
2 ~~bags that direct that they be washed between uses and that raw~~
3 ~~foods be separated from other food products.~~

4 ~~SEC. 3. Chapter 20 (commencing with Section 26250) is added~~
5 ~~to Division 20 of the Health and Safety Code, to read:~~

6
7 ~~CHAPTER 20. REUSABLE BAGS~~
8

9 ~~26250. (a) No person shall manufacture, sell, or distribute in~~
10 ~~commerce a reusable bag that does not contain the following~~
11 ~~warning label in 10-point type:~~
12

13 ~~WARNING: Reusable bags must be cleaned and disinfected~~
14 ~~between uses to prevent food cross contamination. Failure to do~~
15 ~~so can cause serious illness, cancer, or birth defects resulting from~~
16 ~~food-borne pathogens. Once used for other purposes, reusable bags~~
17 ~~should not be used for carrying groceries.~~
18

19 ~~(b) The warning shall be conspicuously displayed on a five-inch~~
20 ~~by eight-inch sign with 18 point type near any display where~~
21 ~~reusable bags are sold to consumers.~~

22 ~~(c) For the purposes of this chapter, "reusable bag" means a~~
23 ~~washable bag used by consumers to transport food from retail food~~
24 ~~facilities, intended to be used repeatedly, and made from a durable~~
25 ~~material, such as canvas, cloth, polypropylene, polyester, or~~
26 ~~polyethylene.~~

27 ~~26251. (a) Any person who violates Section 26250 may be~~
28 ~~enjoined in any court of competent jurisdiction.~~

29 ~~(b) (1) Any person who violates Section 26250 shall be liable~~
30 ~~for a civil penalty not to exceed two thousand five hundred dollars~~
31 ~~(\$2,500) per day for each violation in addition to any other penalty~~
32 ~~established by law. That civil penalty may be assessed and~~
33 ~~recovered in a civil action brought in any court of competent~~
34 ~~jurisdiction.~~

35 ~~(2) In assessing the amount of a civil penalty for a violation of~~
36 ~~this chapter, the court shall consider all of the following:~~

37 ~~(A) The nature and extent of the violation.~~

38 ~~(B) The number of, and severity of, the violations.~~

39 ~~(C) The economic effect of the penalty on the violator.~~

1 ~~(D) Whether the violator took good faith measures to comply~~
2 ~~with this chapter and the time these measures were taken.~~

3 ~~(E) The willfulness of the violator's misconduct.~~

4 ~~(F) The deterrent effect that the imposition of the penalty would~~
5 ~~have on both the violator and the regulated community as a whole.~~

6 ~~(G) Any other factor that justice may require.~~

7 ~~(e) Actions pursuant to this section may be brought by the~~
8 ~~Attorney General in the name of the people of the State of~~
9 ~~California, by any district attorney, by any city attorney of a city~~
10 ~~having a population in excess of 750,000, or, with the consent of~~
11 ~~the district attorney, by a city prosecutor in any city or city and~~
12 ~~county having a full-time city prosecutor, or as provided in~~
13 ~~subdivision (d).~~

14 ~~(d) Actions pursuant to this section may be brought by any~~
15 ~~person in the public interest if both of the following requirements~~
16 ~~are met:~~

17 ~~(1) The private action is commenced more than 60 days from~~
18 ~~the date that the person has given notice of an alleged violation of~~
19 ~~Section 26250 that is the subject of the private action to the~~
20 ~~Attorney General and the district attorney, city attorney, or~~
21 ~~prosecutor in whose jurisdiction the violation is alleged to have~~
22 ~~occurred, and to the alleged violator.~~

23 ~~(2) Neither the Attorney General, any district attorney, any city~~
24 ~~attorney, nor any prosecutor has commenced and is diligently~~
25 ~~prosecuting an action against the violation.~~

26 ~~(e) Any person bringing an action in the public interest pursuant~~
27 ~~to subdivision (d) and any person filing any action in which a~~
28 ~~violation of this chapter is alleged shall notify the Attorney General~~
29 ~~that the action has been filed.~~

30 ~~(f) (1) Any person filing an action in the public interest pursuant~~
31 ~~to subdivision (d), any private person filing any action in which a~~
32 ~~violation of this chapter is alleged, or any private person settling~~
33 ~~any violation of this chapter alleged in a notice given pursuant to~~
34 ~~paragraph (1) of subdivision (d), shall, after the action or violation~~
35 ~~is subject either to a settlement or to a judgment, submit to the~~
36 ~~Attorney General a reporting form that includes the results of that~~
37 ~~settlement or judgment and the final disposition of the case, even~~
38 ~~if dismissed. At the time of the filing of any judgment pursuant to~~
39 ~~an action brought in the public interest pursuant to subdivision (d);~~
40 ~~or any action brought by a private person in which a violation of~~

1 this chapter is alleged, the plaintiff shall file an affidavit verifying
2 that the report required by this subdivision has been accurately
3 completed and submitted to the Attorney General.

4 (2) Any person bringing an action in the public interest pursuant
5 to subdivision (d), or any private person bringing an action in
6 which a violation of this chapter is alleged, shall, after the action
7 is either subject to a settlement, with or without court approval, or
8 to a judgment, submit to the Attorney General a report that includes
9 information on any corrective action being taken as a part of the
10 settlement or resolution of the action.

11 (3) The Attorney General shall develop a reporting form that
12 specifies the information that shall be reported, including, but not
13 limited to, for purposes of subdivision (e), the date the action was
14 filed, the nature of the relief sought, and for purposes of this
15 subdivision, the amount of the settlement or civil penalty assessed,
16 other financial terms of the settlement, and any other information
17 the Attorney General deems appropriate.

18 (4) If there is a settlement of an action brought by a person in
19 the public interest under subdivision (d), the plaintiff shall submit
20 the settlement, other than a voluntary dismissal in which no
21 consideration is received from the defendant, to the court for
22 approval upon noticed motion, and the court may approve the
23 settlement only if the court makes all of the following findings:

24 (A) Any warning that is required by the settlement complies
25 with this chapter.

26 (B) Any award of attorney's fees is reasonable under California
27 law.

28 (C) Any penalty amount is reasonable based on the criteria set
29 forth in paragraph (2) of subdivision (b).

30 (5) The plaintiff subject to paragraph (4) has the burden of
31 producing evidence sufficient to sustain each required finding.
32 The plaintiff shall serve the motion and all supporting papers on
33 the Attorney General, who may appear and participate in any
34 proceeding without intervening in the case.

35 (g) The Attorney General shall maintain a record of the
36 information submitted pursuant to subdivisions (e) and (f) and
37 shall make this information available to the public.

38 (h) In any action brought by the Attorney General, a district
39 attorney, a city attorney, or a prosecutor pursuant to this chapter,
40 the Attorney General, district attorney, city attorney, or prosecutor

1 ~~may seek and recover costs and attorney's fees on behalf of any~~
2 ~~party who provides a notice pursuant to subdivision (d) and who~~
3 ~~renders assistance in that action.~~

4 ~~SEC. 4. If the Commission on State Mandates determines that~~
5 ~~this act contains costs mandated by the state, reimbursement to~~
6 ~~local agencies and school districts for those costs shall be made~~
7 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
8 ~~4 of Title 2 of the Government Code.~~

10 _____
11 CORRECTIONS:
12 Text—Pages 3 and 4.
13 _____